MEMORANDUM

TO: Members, Clark Fork Basin Water Management Task Force
FROM: Gerald Mueller, Project Coordinator
SUBJECT: Summary of the May 3, 2004 Meeting
DATE: May 11, 2004

Participants

The following people participated in the Task Force meeting:

Task Force Members:

Eugene Manley	Granite County
Harvey Hackett	Bitter Root Water Forum
Fred Lurie	Blackfoot Challenge
Jim Dinsmore	Upper Clark Fork River Basin Steering Committee
Steve Fry	Avista Corporation
Bill Slack	Joint Board of Control/Lower Flathead Basin
Elna Darrow	Flathead Basin Commission
Holly Franz	PPL Montana LLC
Phil Tourangeau	Confederated Salish and Kootenai
Matt Clifford	Clark Fork Coalition
Jay Stuckey	Green Mountain Conservation District/Lower Clark Fork Basin
Gail Patton	Sanders County
Marc M. Spratt	Flathead Conservation District
Verdell Jackson	Legislature

Staff:

Gerald Mueller	Montana Consensus Council (MCC)
Mike McLane	Montana Department of Natural Resources and Conservation (DNRC)
Will Harmon	Montana Consensus Council (MCC)

Meeting Goals:

- **$** Discuss state management of a block of Hungry Horse Reservoir Water
- **$** Discuss hydropower water rights, including the legal constraints they impose and ideas from the utility representatives for a possible agreement
- **$** Set state water plan hearing(s)
- **$** Discuss production of the water management plan
- **$** Agree on tasks through September 2004

State Management of a Block of Hungry Horse Reservoir Water

Mike McLane reported on his communication with the Bureau of Reclamation (BOR) regarding the availability of a block of Hungry Horse Reservoir water for state management using a handout included below as Appendix 1. His overall conclusion was that the BOR appears willing to discuss a long-term contract for a water purchase subject to existing operational constraints. He noted that the BOR currently has no contracts for Hungry Horse water. BOR staff indicated that government entities with taxing authority can contract for purchasing water on a long-term basis.

The operational constraints relate to the BOR's flood control, power production and fish obligations. Regarding the latter, the operation of Hungry Horse is subject to a biological opinion issued by the National Marine Fisheries Service addressing salmon stocks listed pursuant to the Endangered Species Act. Mr. McLane stated that the constraints arising from the biological opinion are not clear. The current operations at Hungry Horse do not appear to draw the reservoir down as far as historical levels. To provide flood control, March discharges are significantly higher as are those in spring and early summer. However, current operations also provide a greater opportunity to fill the reservoir annually.

Gerald Mueller passed out information related to a report entitled, "Managing the Columbia River: Instream Flows, Water Withdrawals, and Salmon Survival," by the National Academy of Sciences (NAS). The State of Washington asked NAS to provide advice about salmon and water management decisions concerning proposals to appropriate an additional 250,000 to 1,300,000 acre feet of water from the Columbia River. Mr. Mueller had circulated a copy of the executive summary of this report to the Task Force prior to this meeting. Key recommendations and conclusions quoted from the report included:

- Salmon and Environmental Parameters - "Within the body of scientific literature reviewed as part of this study, the relative importance of various environmental variables on smolt survival is not clearly established. When river flows become critically low or water temperatures excessively high, however, pronounced changes in salmon migratory behavior and lower survival rates are expected."
- Prospective Additional Water Withdrawals - "Decisions regarding the issue of additional water withdrawal permits are matters of public policy, but *if additional permits are issued, they should include specific conditions that allow withdrawals to be discontinued during critical periods.* Allowing for additional withdrawals during the critical periods of high demand, low flows, and comparatively high water temperatures identified in this report would increase risks of survivability to listed salmon stocks and would reduce management flexibility during these periods." (Emphasis added.)
- Water Management Institutions - The State of Washington and other basin jurisdictions should convene a joint forum for documenting and discussing the environmental and other consequences of proposed water diversions that exceed a specified threshold.
- Better Management of Existing Water Supplies - The State of Washington and other Columbia River basin entities should continue to explore prospects for water transfers and other market-based programs as alternatives to additional withdrawals.

Mr. Mueller stated that in the past Task Force members have expressed concern that endangered species will constrain water use in the Clark Fork basin, but no direct evidence of such constraints had been identified to date. The NAS report recommendations and conclusions appears to identify possible constraints that might be implemented in the future as a result of the biological opinion for endangered salmon stocks.

Hydropower Water Rights, Junior Rights and Future Water Development

Montana Department of Natural Resources and Conservation (DNRC) Chief Legal Counsel, Tim Hall, discussed the legal implications of the basin's hydropower water rights. He said the first question to answer is whether or not the hydropower rights are legitimate. While the pre-1973 Avista rights will be subject to another objection period, these rights were confirmed in an August

27, 1986 decree issued by Montana Water Judge Holter. Mr. Hall stated that Avista's rights will likely be included in the final basin decree. The next question is whether the rights are filled and what might happen when they are not. Mr. Hall stated that he has not reviewed the basin hydrology which would be necessary to determine water availability. However, when any right is not filled, its holder has the right to make a call on junior users to cease their use of water until the senior right is filled. In case of the hydropower utilities, Avista and PPL Montana would have the right to make a call when their rights are not filled. The junior user has the right to contest the call, but if the utility can show that enjoining the junior's use would result in more water reaching its turbines, the judge is likely to uphold the call. Past court decisions indicate that a junior would not prevail by asserting that his or her use of water would have no *measurable* effect on the senior user. Also, because under Montana law water is a unitary resource, a call can be made on both surface water and groundwater that is directly connected to the surface water.

Holly Franz then offered a proposal that PPL Montana and Avisa could accept as a means of addressing this issue. In the Missouri basin, DNRC conditions all new water rights permits with the requirement that the appropriator purchase annually a temporary water service contract from the BOR. Under the contract, the BOR would release water whenever the flow in the Missouri River would drop below PPL Montana's water right at a specified gauging station. The amount released would be equal to the volume of water used by the appropriator when the flows drop below the trigger level. If applied in the Clark Fork basin, new permit applicants would be required to purchase and take delivery of water from a BOR temporary water service contract from Hungry Horse whenever river flows fell below Avista's and PPL Montana's water right at Noxon Rapids Dam or the Thompson Falls and Kerr Dams, respectively. The amount of water delivered would be equal to the volume of water used by the appropriator when the flows drop below the hydropower water right. Similarly, if junior users purchased temporary water service contracts that provide for delivery of water in the amount used by the junior right holder whenever river flows fell below the hydropower water right, the utility would not need to make a water rights call.

The Task Force identified the following questions for the staff to answer regarding a possible contract for Hungry Horse water:

- Would long-term and temporary service contracts be available only to government entities with taxing authority?
- What agencies would be involved in a consultation regarding a contract for Hungry Horse water?
- What agency would be appropriate to task with exploring contracts for the for Hungry Horse water?

State Water Plan

Mike McLane explained the process necessary to include the Clark Fork Basin water management plan in the State Water Plan using the handout included below in Appendix 3. The DNRC must hold a hearing on a proposed addition to the State Water Plan. The hearing must have been noticed for 30 days, including two weeks of published notice in the newspapers of general circulation in the basin's counties. The DRNC Director then decides whether to pass the proposed plan amendment to the EQC and the legislature for its approval. In an area the size of the Clark Fork Basin, one public hearing may not be sufficient.

Discuss Production of the Water Management Plan

Gerald Mueller introduced Will Harmon who does editing and technical writing as a contractor to the Montana Consensus Council. Mr. Harmon explained proposed to the Task Force that the basin water management plan be written in two formats, a short version that briefly explains the Task Force and its mandate and the Task Force recommendations and a longer version based on the table of contents and chapters that Mr. Mueller has been circulating. In addition, both versions of the plan could be put on compact disc and on the Task Force web page which is accessed through the DNRC web page. The Task Force agreed to this approach.

Tasks Through September 2004

The Task Force agreed to the following list of tasks through September 2004:

- Mr. Mueller will complete the discussion drafts of chapters 1 - 9 and circulate them to the Task Force for their review and comment prior to the June 7 meeting;
- Mr. Mueller will draft a short summary of plan recommendation options that Task Force members can use to discuss with their constituent groups;
- Will Harmon will write both versions of draft management plan;
- The Task Force will adopt a draft plan by July 1, 2004;
- At the June 7 meeting, the Task Force will schedule public meetings on the draft plan;
- After the meetings, the Task Force would meet in early August to modify the draft;
- Will Harmon would then rewrite the draft into a final document which, after Task Force approval, would be printed and sent to the governor and legislature on September 15.

Next Meeting

The next meeting is scheduled for Monday, June 7, 2004 at 9:00 a.m. in the DFWP conference room at 3201 Spurgin Road in Missoula. The agenda will include:

- Review of chapters 6 - 9;
- Discussion of the content of chapter 10, monitoring and evaluating implementation of the water management plan;
- Review of a summary document that Task Force members can discuss with their constituents; and
- Scheduling public meetings on a draft plan.

Appendix 1

To: Clark Fork Task Force Members
From: Mike McLane, Water Planner
RE: Hungry Horse Reservoir: Is this a potential future basin water supply?
Date: April 26, 2004

The status, use, and potential future uses of Hungry Horse Reservoir is reoccurring topic of discussion in the Clark Fork Task Force's recent meetings. Questions that have been raised include

- what are the water rights and designated uses of this project,
- will the holder of the facility, consider future allocation or reallocate the uses of water from this facility and
- what might be the constraints, limitation or considerations that control allocations from the facility?

At the request of the Task Force, contact was made with the United States Department of Interior's Bureau of Reclamation, Pacific Northwest Office to explore options. Also a cursory examination was made of 1) the congressional authorization for Hungry Horse dam, 2) its water rights and 3) specific operational Hungry Horse constraints created by the "Biological Opinion of the Federal Columbia River Power System".

BOR Response:

On behalf of the Clark Fork Task Force, informal inquires were made to the Bureau of Reclamation concerning the possibility of developing water contracts for water in Hungry Horse Reservoir. On April 21, 2004 BOR participated in an annual planning session with Montana DNRC. During this session they responded to the Task Force request and shared documents answering similar past inquires during.

Three communications were provided and are attached. All three deliver a similar message. These communications indicate a positive response to contracting but include caveats related to current operational constraints.

In 1983 in a letter from the Bureau for Reclamation to the Department of Natural Resources and Conservation the bureau stated,

- "(I)f Flathead Basin water users are interested in obtaining appropriations for development of additional irrigation works, we (BOR) would be glad to provide information on the available options" further,
- "If the water is desired for privately constructed facilities, **storage water from Hungry Horse Dam can be marketed** (emphasis added) under the provision of the Reclamation Act of June 17, 1902".

The bureau noted that water service and repayment contracts were necessary. It would be necessary to review environmental aspects associated with the use of water. BOR and contractor would also have to undertake a financial analysis of the water users ability to pay.

The Flathead Conservation District appears to have asked a similar question of the Bureau in 1990. BOR's response was submitted in an April 24 1990 letter to Mr. Van Rinsum. This letter is very similar to that provided in the 1983 letter to DNRC. Language addressing future a contract is almost identical. Necessary actions associated to contracting included,

1. Public participation in negotiations and decision-making,

2. Addressing environmental aspects in compliance with the National Environmental Policy act of 1969,
3. Identify the available water supply,
4. Perform a financial analysis of the water users' ability to pay for the irrigation water and
5. Determine the irrigation water charge (this includes the water users repayment ability and an allocation to irrigator for an appropriate portion of the construction).

DNRC's March 2004 request for information stimulated internal research and dialog. The BOR shared a March 31, 2004 internal memo resulting from this facility use review. In this memo BOR staff confirm that there are currently *no contracts for irrigation water supply out of the Hungry Horse facility.* Further "Cost Allocations" are currently split between power generation (70%) and flood control (30%).

Entering into addition cost would require an allocation of costs between the users. The memo makes note of the earlier, and above mentioned, inquiries for irrigation water contracting. They noted that the tone of both past letters were quite similar. They further comment that BOR would reply in a similar manner to a future inquiry. BOR staff confirmed that an irrigation water right is included in the mix of uses for this facility. The memo also notes internal discussion related to the biological opinion stating,

> *"the main concern is that the existing operation of the project is the subject of an ongoing ESA consultation and covered under a BiOp. Consequently, any change in project operations to provide water for irrigation would require reinitiating consultation. … this fact alone would probably weigh heavily on any decision by management on whether or not to entertain request for water from this project for irrigation use"*

Congressional Authorization:

The statutory authorization for Hungry Horse Reservoir clearly identified multiple uses both in state and out of state. This federal authorization reads as follows.

> *"**Construction, operation and maintenance of Hungry Horse Dam**: For the purpose of irrigation and reclamation of arid lands, for controlling flood, improving navigation, regulating the flow of the South Fork of the Flathead River, for the generation of electric energy and for other beneficial uses primarily in the State of Montana, but also in downstream areas, the secretary of the Interior is authorized and directed to proceed as soon as practicable with he the construction, operation and maintenance of the proposed Hungry Horse Dam…"(*43 USC 593A) June 5, 1944

Water Rights of Record:

The United States Bureau of Reclamation filed "Statements of Existing Water Right Claims" in the state's general stream adjudication. These claims assert that water uses that include power generation, flood control, irrigation, storage for future sale, recreation, fish and wildlife.

Eight "Statements of Existing Water Right Claim" were filed for Hungry Horse Reservoir in Montana's general stream adjudication. Through the adjudication proceedings several changes occurred. Three claims were withdrawn and six "implied claims were generated." Initial review of these files appears to indicate that these modifications were the result of objections to those claims and stipulations developed to resolve those objections. Finally a permit application was applied for and granted under Montana's Water Use Act. A listing of these rights (11 active claims, 1 permit and 3 withdrawn claims) are found in Table 1.

It appears that claims currently reflect use of the full capacity (3,500,000 acre feet) of the reservoir to meet the purposes of the reservoir. These uses include a potentially varying mix of five (5) uses (irrigation, power generation, recreation, fish and wildlife and storage[1]). Another set of claims reflects use of an additional second fill of the reservoir (550,000 acre feet) developed by historic use but under a later, junior, priority date.

However, some stipulation issues remain outstanding before the Water Court. The court determined that certain aspects of the stipulations would define or redefine the "nature of a storage right" under Montana law. The court has therefore notified the parties that these arguments must be argued in hearing. Such arguments would be open to other parities and appear most likely to occur at the preliminary decree stage.

Biological Opinion:

The Endangered Species Act's section 7 consultation created a biological opinion on the operation of the Federal Columbia River Power System and included a juvenile fish transportation program. A December 21, 2000 report prepared by the National Marine Fisheries Service was accessed via the Internet.[2] Those portions directly addressing Hungry Horse were reviewed.

The biological opinion considers the aggregate effects of all 19 BOR projects on streamflows in the mainstem Columbia and Snake rivers. It also considers the effects of using some of these projects and other sources to provide instream flow in the Columbia River downstream of Chief Joseph Dam. (See map Figure 1) Effects considered included the frequency of attainment of the flow objectives established in previous biological opinions.

Section 3, "Proposed Action", in subsection 3.2.2.2, includes operational guidelines for Hungry Horse. This section states:

> *Hungry Horse Dam would be operated during the fall and winter months to achieve a 75% chance of refill to its April 10 upper rule curve. Hungry horse Dam would also operate to meet a year-round minimum instantaneous streamflow of 3,500 cubic feet per second in the Flathead River near Columbia Falls to protect instream habitat for native resident fish populations, including ESA listed bull trout. Using water supply forecasts the Action Agencies would operate the project to refill no later than the end of the July 4 weekend.* ***The Action Agencies would draft the project to 3,540 feet to assist in meeting the summer anadromous fish flow objective at McNary Dam,*** *(emphasis added) as coordinated through the Technical Management Team. Because a selective-withdrawal, water-temperature-control structure has been installed at Hungry Horse, the Action Agencies would* ***plan water releases to try to meet state-recommended*** *(emphasis added) water temperature guidelines during he period June through October.*

Hungry Horse Dam crest is 3565. This seems to imply that the top 20feet of reservoir storage is allocated to anadromous fish.

Operational Environmental Assessment

A November 2002 Draft Environmental Assessment (EA) developed jointly by the Army Corp and BOR evaluates the effects of interim implementation of operational actions at Libby and Hungry

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[1] Storage is further defined by the court document as follow, "The purpose is for regulating the flow of the South Fork of the Flathead River. This is a storage aright used for regulation flows of he South Fork of the Flathead River."

[2] http://www.nwr.noaa.gov/1hydrop/hydroweb/docs/Final/2000Biop.html

Horse dam. Evaluated is a variable discharge for flood control and fish flows known as VARQ FC. Hungry horse began interim VARQ implementation in 2002. The draft EA states, "the VARQ with fish flows is a reasonable and prudent alternative of the 2000 FCRPS Biological Opinion". This operating plan enable the operating agencies to more easily supply flows for fish downstream of headwater projects like Libby and Hungry Horse Dams. The intent is to provide higher dam discharges required for conservation and recovery of threatened and endangered species while maintain system flood controls and improving the chance of reservoir refill.

BOR developed a Voluntary Environmental Assessment (FONSI 02-02), VARQ Flood Control Plan At Hungry Horse Dam, MT, published March 2002. This documents found no significant impacts. "Reclamation deems that interim implementation of VARQ is not a departure form historic operational limits or operation flexibility of he dam. Hydraulically they found the discharge would flow a more normative hydrograph with less variability from one month to the next. Hungry horse will be drafted to near its minimum elevation about one month earlier in the year. Flows would generally be greater during February, late May and June. And lower in January and April. April spills are less likelihood of since flood control drafts are completed in March.

Table 1 Water Right Listing for Hungry Horse Reservoir

Water right Number	Nature of Filing	Type of historic right	Source	Use	Flow (CFS)	Volume (Ac. Ft.)	Priority
134905[3,4]	Claim	Filed	S. Fk Flathead	Irrigation		3,500,000	6/16/1947
134906[1,5]	Claim	Filed	So Fk Flathead	Recreation		3,500,00	6/16/1947
134907[6]	Claim			Withdrawn			
134908	Claim			Withdrawn			
124909	Claim			Withdrawn			
134910[1]	Claim	Filed	So. Fk. Flathead	Power Generation (Direct flow)	11,525	3,500,000	6/16/1947
134911[1,2,3]	Claim		S., Fk. Flathead	Fish & Wildlife		3,500,000	6/16/1947
124912[1,2]	Claim		S. Fk. Flathead	Storage		3,500,000	6/16/1947
214931 [1,2,7],	Implied Claim		So. Fk Flathead	Irrigation (Refill storage)		515,000	12/31/'55
214932 [1,2,3,5],	Implied Claim		So. Fk. Flathead	Recreation		515,000	12/31/1955
214933[1,2,3,5]	Implied Claim		So. Fk. Flathead	Fish and Wildlife		564,000	12/31/1955
214934[1,2,5]	Implied Claim		So. Fk. Flathead	Power Generation		3,500,000	6/16/1947
214935[1,2,5]	Implied Claim		So. Fk. Flathead	Power Generation (refill storage)		515,000	12/31/1955
214936 [2,5]	Implied Claim		Storage	Storage		515,000	12/31/1955
85695[8]	Permit		So Fk. Flathead	Power Generation	1,065		4/6/1994

[3] Water Court noted that claims 134905, 124906, 124910, 134911, 134912 and 214934 were multiple uses of the same water right. This use for several purposes does NOT increase the extent of the water right. Rather is decrees the right to alternate and exchange the use of the water in accord with historical practices

[4] The Water Court has stated that they have not yet made a determination on the scope, nature and extent of reservoir storage rights. Both filed and implied claims that are storage for implied uses as so remarked and include claim 134, 905, 134906,

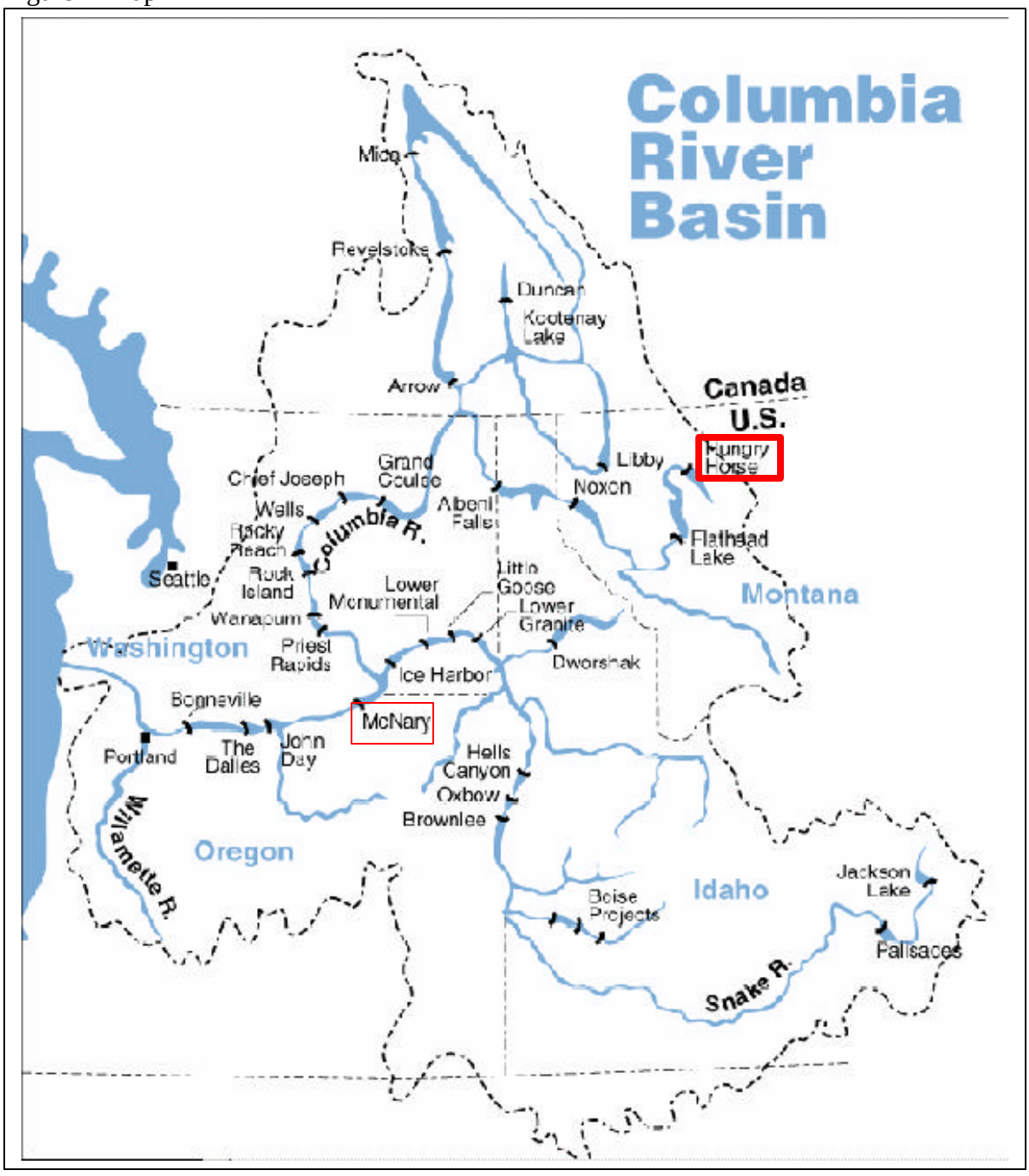
[5] Claims filed for recreation, fish and wildlife have been remarked that there are questions of validity as defined in the Bean Lake Case (Bean Lake I) {234 Montana 343 (1988)}. Since this water court action the Montana Supreme Court has expanded that earlier decision. Their later decision commonly referred to as Bean Lake III indicates that such non-diversionary uses could be developed prior to 1973. Further the Water Court was directed to evaluate and make a finding on each such claim submitted in the general stream adjudication proceedings.

[6] The US Attorney representing the BOR on March 27, 1996 withdrew claims 134907, 134908 and 123909.

[7] Implied Claim based upon a stipulation between US BOR and Montana DNRC.

[8] Permit issued by Mt DNRC under the Water Use Act allows an increased flow to be diverted through upgraded turbines for additional power generation.

Figure 1 Map


Columbia River Basin
Mica
Revelstoke
Duncan
Kootenay Lake
Arrow
Canada
U.S.
Hungry Horse
Libby
Noxon
Grand Coulee
Chief Joseph
Wells
Rocky Reach
Columbia R.
Albeni Falls
Flathead Lake
Seattle
Rock Island
Lower Monumental
Little Goose
Lower Granite
Montana
Wanapum
Priest Rapids
Washington
Dworshak
Ice Harbor
Bonneville
McNary
Portland
The Dalles
John Day
Hells Canyon
Oxbow
Brownlee
Willamette R.
Oregon
Idaho
Boise Projects
Jackson Lake
Palisades
Snake R.

Hungry Horse Quick Facts

Copied from: http://www.usbr.gov/dataweb/html/hhorse.html

Authorization

Construction of Hungry Horse Dam was authorized by the Act of June 5, 1944 (58 Stat. 270, Public Law 78-329). The authorized purposes of the Hungry Horse Project are irrigation flood control, navigation, streamflow regulation, hydroelectric generation, and other beneficial uses.

Construction

The prime contract for the construction of Hungry Horse Dam and Powerplant was awarded April 21, 1948, and the work was completed July 18, 1953.

South Fork Flathead River

Drainage area above Hungry Horse Dam	1,633 mi^2
Annual discharge:	
Maximum - 1974	4,008,706 acre-ft
Minimum - 1953	764,333 acre-ft
Average - 1911-1996	2,521,051 acre-ft

Unit descriptions and facilities

Hungry Horse Dam and Reservoir

The 564-foot-high dam is a variable-thickness concrete arch structure with a crest length of 2,115 ft. The dam and appurtenant works contain 3,086,200 cubic yards of concrete. The spillway is the highest morning-glory structure in the world. Water cascading over the spillway rim drops a maximum distance of 490 feet. The capacity of the spillway is 50,000 cubic feet per second, and the reservoir has a total capacity of 3,468,000 acre-feet.

Powerplant

Power generating facilities are housed in a building with a structural steel framework surmounting a reinforced concrete substructure 394 feet long, 76 feet wide, and 157 feet high, constructed across the river channel at the downstream toe of the dam. The original design included four 71,250-kilowatt generators-a total of 285,000 kilowatts installed capacity. The generator capacity was uprated in the 1990´s to 107,000 kilowatts each for a total plant capacity of 428,000 kilowatts.

In 1995, a selective withdrawal system was installed on all four-unit penstock intakes. This selective withdrawal system is used from the first of June to the end of October to increase the water discharge temperature to reduce the thermal shock for downstream fisheries and increasing aquatic insect communities for Bull Trout growth and reproduction.

Statistics

General

- Vicinity Map
- Region (Map) ..... Pacific Northwest
- State (Map) ..... Montana
- County ..... Flathead
- Project ..... Hungry Horse
- Dam type ..... Concrete thick arch
- Location ..9 mi SW of Columbia Falls, MT
- Watercourse ..... South Fork of Flathead River
- Reservoir ..... Hungry Horse
- Original construction 1948-1953
- Modified in 1994-1995
- National ID Number MT00565
- Hydrologic Unit Code .....

Hydraulics

- Total storage to
- El. 3560 ..... 3,467,179 acre-ft
- Service spillway
  Capacity at El. 3565 ..... 53,000 cfs
- Outlet works
  Capacity at El. 3565 ..... 14,040 cfs
- Power outlet capacity ..... 11,200 cfs

Dimensions

- Crest Elevation ..... 3565.0 ft
- Structural Height ..... 564 ft
- Hydraulic Height ..... 515 ft
- Crest Length ..... 2115 ft
- Crest Width ..... 34 ft
- Base Width ..... 320 ft
- Volume of Concrete ..... 2,934,500 cu yd

Hydrology

- Drainage area ..... 1,640 sq mi
- Hydrometeorological Report ..... NA
- PMF ..... 1983 Summer Thunderstorm
- Volume ..... 107,700 acre-ft over 3 days
- Peak inflow ..... 168,300 cfs
- Maximum water surface ..... 3,562.3 ft

Appendix 2

Conditions attached to permits issued in the Missouri Riser Basin

THE APPROPRIATOR SHALL PURCHASE A U.S. BUREAU OF RECLAMATION TEMPORARY WATER SERVICE CONTRACT (TWCA) EVERY YEAR WATER IS TO BE USED. APPROPRIATION OF WATER WITHOUT A VALID TWSC WILL CONSTITUTE A VIOLATION OF THE PERMIT CONDITION. AND THE PERMIT CAN BE REVOKED BY THE DNRC.

OR

THE APPROPRIATOR SHALL PURCHASE A U.S. BUREAU OF RECLAMATION TEMPORARY WATER SERVICE CONTRACT (TWSC) EVERY YEAR WATER IS TO BE USED DURING ANY PORTION OF TH PERIOD OF APPROPRIATION WHEN THE SUM OF THE FLOW RATES AT USGS GAUGING STATIONS NO. 06089000 (SUN RIVER NEAR VAUGHN) AND NO. 06078200 (MISSOURI RIVER NEAR ULM) DROPS BELOW 7,880 CFS. THE VOLUME OF WATER STATED ON THE TWSC MUST BE AT LEAST EQUIVALENT TO OR GREATER THAN ANY VOLUME OF WATER USED WHEN SAID SUM OF FlOW RATES DROPS BELOW 7880 CFS.

WHEN APPROPRIATING WATER WITHOUT A TWSC, THE FLOWS AT THE AFOREMENTIONED USGS GAUGING STATIONS MUST BE CHECKED DAILY. THE CURRENT INTERNET SITE IS:
http://mt.waterdata.usgs.gov/nwis/current?type=flow

APPROPRIATION OF WATER WHEN SAID SUM OF FLOWS IS BELOW 7,880 CFS WITHOUT A VALID TWSC WILL CONSTITUTE A VIOLATION OF THE PERMIT CONDITION AND THE PERMIT CAN BE REVOKED BY THE DNRC.

Appendix 3

State Water Plan

Montana Code Annotated 85-1-203

What is the State Water Plan

- SWP is a comprehensive, coordinated multiple-use water resources plan
- SWP may he formulated in sections
- SWP section correspond with hydrologic division of the state.

A Plan Sections Provide:

- A progressive program for the Conservation Development and Utilization of state's water resources.
- Propose effective means by which these water resource may he applied for he benefit of the people.
- Due consideration of alternative uses and combinations of use.

Prior to Adoption

- Must hold hearings in state or in area encompassed by a plan section
- Must Notice hearing by:
  - Publishing for 2 consecutive weeks,
  - A newspaper of general county circulation,
  - In each county encompassed by the p]an, and
  - At least 30 days prior to the hearing.

Legislative Involvement

In developing and revising the state water plan the department shall consult with the Environmental Quality Council & solicit advice.

- Submit to Environmental Quality Council
  - (two meeting left - Sept and Oct?)
- Submit to Legislature
  - At Beginning of Season
- Legislature, by joint resolution, may revise the State Water Plan

Clark Fork Task Force

- Prepare a Management Plan for the Clark Fork Basin
- Task Force shal] examine existing laws, rules, plans and other provisions affecting water management in the Basin
- Water management plan must
  - identify options to protect the security of water rights, and provide for the orderly development and conservation of water in the future.

Deadlines

- The Water Management Plan must be submitted to the 59th legislature by Sept. 15, 2004